



UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

JESS C. ARNDELL and SUZANNE K.  
ARNDELL,

Plaintiffs,

v.

ROBISON, BELAUSTEGUI, SHARP &  
LOW, et al.,

Defendants.

3:11-cv-469-RCJ-VPC

**ORDER**

Currently before the Court is Defendants' Motion to Dismiss or, in the Alternative, Motion to Strike Plaintiffs' Duplicative Claims (#8). The Court heard oral argument on March 19, 2012.

**BACKGROUND**

In July 2011, then *pro se* Plaintiffs Jess C. Arndell ("Arndell") and Suzanne K. Arndell (collectively "Plaintiffs") filed a complaint against Defendants Robison, Belaustegui, Sharp & Low; Kent R. Robison; Thomas L. Belaustegui; F. DeArmond Sharp; Keegan G. Low; and Mark G. Simons (collectively "Defendants") in this Court based on diversity jurisdiction.<sup>1</sup> (Compl. (#1) at 1, 3). Plaintiffs were assignees of all claims that Hidden Meadows Company aka Hidden Meadows, Ltd aka Hidden Meadows, LLC aka Hidden Meadows Corporation (collectively "HMC") and Jess Arndell Construction Co., Inc. aka Jess Arndell Construction Company, Inc. aka Jess Arndell Construction Company (collectively "JACC") may have had against any and all of the Defendants. (*Id.* at 2).

<sup>1</sup> Plaintiffs are citizens of Truckee, California, and Defendants are citizens of Nevada. (Compl. (#1) at 1-2).

1 The complaint alleged the following. From December 2000 to the date of the complaint,  
2 the law firm of Robison, Belaustegui, Sharp & Low (hereinafter "the Law Firm") had  
3 represented Arndell (individually), HMC, and JACC in various matters including a real estate  
4 project known as the Hidden Meadows Housing Development. (*Id.* at 3). In 2004, HMC and  
5 JACC completed the development which consisted of 101 single family homes. (*Id.*).

6 The complaint alleged that a civil engineering firm called Stantec aka SEA ("SEA") had  
7 been the civil engineer for the first phase of construction. (*Id.*). Because the county forbade  
8 the import of fill soil for the project, SEA recommended that HMC and JACC utilize a borrow  
9 site and a nearby slough located on the project to obtain soil to accomplish the original mass  
10 grading. (*Id.*). The site eventually became a 17-acre retention pond directly adjacent to the  
11 development. (*Id.*). During construction it became apparent that there was insufficient soil  
12 quantity and quality to complete construction as designed by SEA. (*Id.* at 4). To cover up its  
13 flawed analysis, SEA recommended that Arndell dig deeper into the borrow site to obtain more  
14 soil resulting in an unplanned 17-acre retention pond where the original plan called for a multi-  
15 purpose park. (*Id.*). As a result of SEA's fraudulent conduct, HMC incurred over \$11,000,000  
16 in debt to JACC. (*Id.*). JACC had expended the sums on behalf of HMC in an attempt cure  
17 the deficiencies of SEA's fraudulent geo-technical report. (*Id.*). As a result, HMC, through its  
18 attorneys at the Law Firm, filed a lawsuit against SEA over the soil deficiencies (hereinafter  
19 "Dirt Suit"). (*Id.*).

20 The complaint alleged that during the Dirt Suit, Mark Simons was lead counsel and Kent  
21 Robison was the supervisory attorney. (*Id.*). The attorneys advised Arndell that he had a  
22 strong case against SEA, that his damages were easily verified, and that the fraud was  
23 obvious. (*Id.* at 4-5). Arndell and his entities spent \$10,000,000 on the litigation. (*Id.* at 5).  
24 On January 4, 2003, two days before the Dirt Suit trial was to commence, a settlement  
25 conference was held. (*Id.*). Arndell and his daughter were shocked when Mark Simons  
26 recommended that they accept SEA's first offer of \$75,000. (*Id.*). Simons told Arndell that  
27 Arndell had to accept the offer because Arndell owed the Law Firm \$90,000 due in overdue  
28 attorney's fees and that the Law Firm was not prepared to go to trial. (*Id.*). Simons told Arndell

1 that Arndell needed to come up with an additional \$250,000 immediately to cover the Law  
2 Firm's attorneys' fees to try the case. (*Id.*).

3 The complaint alleged that SEA eventually increased their settlement offer to  
4 \$1,450,000. (*Id.*). Arndell refused to accept that offer because he knew that it would mean  
5 bankruptcy for himself, HMC, and JACC. (*Id.*). The Law Firm applied inappropriate pressure  
6 and contacted Arndell's wife, Suzanne, without Arndell's permission in an attempt to influence  
7 Arndell's business judgment. (*Id.* at 5-6). Thirty days after the settlement conference, the Law  
8 Firm summoned Arndell to its offices. (*Id.* at 6). Simons and Robison told Arndell that he had  
9 to accept the terms of the settlement agreement because they had already told SEA's counsel  
10 that Arndell had accepted the \$1,450,000 at the settlement conference, thirty days prior. (*Id.*).  
11 Simons and Robison also told Arndell that the case had been taken off the trial calendar when  
12 they had told SEA that Arndell had accepted the offer at the settlement conference. (*Id.*).  
13 Simons and Robison stated that they were not prepared for trial. (*Id.*). At that meeting,  
14 Simons and Robison told Arndell that, as part of the settlement, he had to agree "to an  
15 indemnification by HMC of any future claims that might be asserted by any party against SEA  
16 related to the Hidden Meadows development." (*Id.*). The Law Firm represented to Arndell that  
17 his part of the settlement would not harm HMC, JACC, or himself personally because HMC  
18 was judgment proof and indemnification would only apply to HMC. (*Id.* at 6-7). The Law Firm  
19 and Arndell were aware of the pending litigation by various homeowners in the development  
20 due to design defects caused by SEA's fraudulent geo-technical report. (*Id.* at 7). On  
21 February 26, 2003, the parties signed the settlement agreement for the Dirt Suit. (*Id.*).

22 The complaint alleged that, in November 2003, 71 homeowners had filed defect  
23 lawsuits against HMC and JACC. (*Id.*). In that lawsuit, a judge ruled that Arndell, JACC, and  
24 HMC were alter egos of one another and that the indemnification agreement had precluded  
25 Arndell and JACC from pursuing cross-claims against SEA in the defect suit. (*Id.*). As a direct  
26 result of the alter ego and indemnification ruling, Arndell and JACC paid out over \$5,000,000  
27 in claims that should have been paid out by SEA. (*Id.*). JACC's contractor's license was  
28 revoked after its financial stability was severely damaged. (*Id.*). Arndell's income had been

1 about \$200,000 annually and was now "virtually nothing." (*Id.*).

2 The complaint alleged that the Law Firm had a conflict of interest when it had  
3 represented Arndell and his entities in the Dirt Suit litigation. (*Id.* at 8). The Law Firm did not  
4 suggest that Arndell, HMC, or JACC obtain separate counsel or recommend that they obtain  
5 a second opinion. (*Id.* at 10). After Arndell consulted with independent counsel, he learned  
6 of the Law Firm's "egregious conduct." (*Id.*). Arndell has requested copies of his files,  
7 accounting of the attorneys' fees that he had paid, and fees paid out by various insurers to see  
8 if double payments have occurred. (*Id.*). The Law Firm has refused all requests. (*Id.*).

9 Plaintiffs alleged ten causes of action: (1) breach of fiduciary duty; (2) common law  
10 negligence, lack of skill and diligence and failure to use reasonable skill and diligence; (3) self-  
11 dealing; (4) misrepresentation; (5) undue influence; (6) fraud; (7) intentional harm, willful  
12 neglect and unethical conduct due to Defendants' refusal to communicate with Plaintiffs, and  
13 provide requested documents and an accounting; (8) abandonment; (9) settling litigation  
14 without clients' authority; and (10) exemplary damages. (*Id.* at 10-20).

### 15 DISCUSSION

16 Defendants file a motion entitled a "motion to dismiss or, in the alternative, motion to  
17 strike Plaintiffs' duplicative claims." (Mot. to Dismiss (#8) at 1). However, the motion really  
18 seeks to consolidate all ten claims into one single claim for legal malpractice. (*Id.* at 4, 6-7).

19 In response, Plaintiffs, now counseled, argue that the Court should deny the motion.  
20 (Resp. to Mot. to Dismiss (#11-1) at 5).<sup>2</sup> However, they agree that all of their claims, except  
21 for three, do set forth specific acts of legal malpractice and are willing to re-plead their  
22 complaint to have one umbrella count for legal malpractice. (Resp. to Mot. to Dismiss (#11)  
23 at 4). Plaintiffs assert that their claims for fraud, misrepresentation, and exemplary damages  
24 should remain as separate counts. (*Id.*; Resp. to Mot. to Dismiss (#11-1) at 2, 4).<sup>3</sup>

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26 <sup>2</sup> The complete response is filed in two parts under docket entries #11 and #11-1.

27 <sup>3</sup> Plaintiffs also hypothesize that Defendants will later try to raise a statute of limitations  
28 argument. (Resp. to Mot. to Dismiss (#11) at 3-4). Because that issue is not before the Court  
at this time, this order does not address that argument.

1 In reply, Defendants assert that Plaintiffs' claims for misrepresentation, fraud, and  
2 exemplary damages are not separate and distinct causes of action and are part of the legal  
3 malpractice claim. (Reply to Mot. to Dismiss (#12) at 4). Defendants argue that exemplary  
4 damages is a remedy and not a cause of action. (*Id.*). Defendants assert that Plaintiffs'  
5 misrepresentation and fraud claims state that those actions took place during Defendants'  
6 representation of Plaintiffs and, thus, are part of the legal malpractice claim. (*Id.*).

7 In *Stalk v. Mushkin*, 199 P.3d 838, 842 (Nev. 2009), the Nevada Supreme Court  
8 reached a statute of limitations issue by first addressing the "true nature" of a claim. *Id.*  
9 There, the Nevada Supreme Court classified a party's breach of fiduciary claim as one for  
10 legal malpractice because the claim was grounded on allegations that the lawyer-defendant  
11 had "breached certain duties, namely, confidentiality and loyalty, that would not exist but for  
12 the attorney-client relationship." *Id.* at 843. The Nevada Supreme Court held that "claims for  
13 breach of fiduciary duty arising out of an attorney-client relationship are legal malpractice  
14 claims subject to NRS § 11.207(1)'s limitation period, and claims for breach of fiduciary duty  
15 based on fiduciary relationships other than attorney-client are akin to fraud claims, subject to  
16 the limitation period set forth under NRS § 11.190(3)(d)." *Id.* at 844.

17 In this case, Plaintiffs nine substantive claims are, in essence, one claim for legal  
18 malpractice because they are all based on actions that took place during and because of the  
19 attorney-client relationship. Additionally, the fraud and misrepresentation claims also rely on  
20 the actions that took place during and because of the attorney-client relationship. (See Compl.  
21 (#1) at 13-16). As such, all nine substantive claims are one legal malpractice claim.  
22 Moreover, Defendants are correct that exemplary damages are a remedy and not a separate  
23 cause of action. See generally NRS § 42.005 (explaining the limitations on exemplary and  
24 punitive damages). As such, the Court grants Defendants' motion to the extent that it seeks  
25 to consolidate all nine substantive claims into one claim for legal malpractice and denies  
26 Defendants' motion to the extent that it seeks to strike or dismiss any of the claims from the  
27 lawsuit (#8).

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**CONCLUSION**

For the foregoing reasons, IT IS ORDERED that Defendants' Motion to Dismiss or, in the Alternative, Motion to Strike Plaintiffs' Duplicative Claims (#8) is GRANTED in part and DENIED in part. The Court GRANTS the motion to the extent that it seeks to consolidate Plaintiffs' nine substantive claims into one claim for legal malpractice and DENIES the motion to the extent that it seeks to dismiss any of Plaintiffs' claims from the lawsuit.

IT IS FURTHER ORDERED that Plaintiffs have 30 days from the date of this order to file an amended complaint.

DATED: This 11th day of May, 2012.

  
United States District Judge